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Attorneys for Plaintiff

ISIAH WASHINGTON

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ISIAH WASHINGTON, an individual,

Plaintiff,

v.

SIERRA ALUMINUM COMPANY;

MANUEL HERNANDEZ, an

individual, GUADALUPE SANTOS

SANCHEZ, an individual, and DOES 2

through 10, inclusive,

Defendants.

DISCOVERY MATTER

CASE NO.: 5:16-cv-00298-DMG (SPx)

STIPULATED PROTECTIVE ORDER

HON. SHERI PYM

Discovery Cut-Off: July 3, 2017

Pre-Trial Conference: October 10, 2017

Trial Date: November 7, 2017

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does

1 not confer blanket protections on all disclosures or responses to discovery and that the
2 protection it affords from public disclosure and use extends only to the limited
3 information or items that are entitled to confidential treatment under the applicable
4 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
5 that this Stipulated Protective Order does not entitle them to file confidential
6 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
7 followed and the standards that will be applied when a party seeks permission from the
8 court to file material under seal.

9 1.2 GOOD CAUSE STATEMENT

10 This action is likely to involve the discovery and disclosure of private
11 information relating to the Plaintiff, the Defendants, various employees of Defendant
12 SIERRA ALUMINUM COMPANY (“Sierra Aluminum”), and other Third-Parties.
13 For instance, Plaintiff has served subpoenas on two Third-Party workforce
14 management companies seeking documents relating to all candidates or applicants
15 referred by such companies to Sierra Aluminum, including background checks and
16 documents identifying criminal convictions of the Third-Parties. Such documents and
17 information are protected under the privacy rights of the various Third-Parties
18 applicants and employees. *See, e.g., Gehring v. Case Corp.*, 43 F.3d 340, 342–43 (7th
19 Cir.1994); *Miller v. Federal Express Corp.*, 186 F.R.D. 376, 384 (W.D. Tenn. 1999).
20 Similarly, Defendant seeks the mental examination of the Plaintiff pursuant to Rule 35
21 of the Federal Rules of Civil Procedure.

22 To protect the privacy interests of both Parties and Third-Parties, to expedite the
23 flow of information, to facilitate the prompt resolution of disputes over confidentiality
24 of discovery materials, to adequately protect the confidential information the Parties
25 and Third-Parties, to ensure that the parties are permitted reasonable necessary use of
26 such material in preparation for and in the conduct of trial, to address the handling of
27 such documents at the end of the litigation, and to serve the ends of justice, a
28 protective order for such information is justified in this matter. It is the intent of the

Parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: This above-captioned pending federal law suit.

2.2 Challenging Party: a Party or Third-Party that challenges the designation of information or items under this Order.

2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Third-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 House Counsel: attorneys who are employees of a Party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Third-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a Party to this Action but are retained to represent or advise a party to this Action and have appeared in this Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, and includes support staff

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Third-Party that produces Disclosure or Discovery Materials in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
4 in writing or a court order otherwise directs. Final disposition shall be deemed to be
5 the later of (1) dismissal of all claims and defenses in this Action, with or without
6 prejudice; and (2) final judgment herein after the completion and exhaustion of all
7 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
8 for filing any motions or applications for extension of time pursuant to applicable law.
9

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Third-Party that designates information or items for protection under this
13 Order must take care to limit any such designation to specific material that qualifies
14 under the appropriate standards. The Designating Party must designate for protection
15 only those parts of material, documents, items, or oral or written communications that
16 qualify so that other portions of the material, documents, items, or communications for
17 which protection is not warranted are not swept unjustifiably within the ambit of this
18 Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (e.g., to unnecessarily encumber the case development process or to impose
22 unnecessary expenses and burdens on other parties) may expose the Designating
23 Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, which Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this
28 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated

1 or ordered, Disclosure or Discovery Material that qualifies for protection under this
2 Order must be clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
6 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
7 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
8 portion or portions of the material on a page qualifies for protection, the Producing
9 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

11 A Party or Non-Party that makes original documents available for inspection
12 need not designate them for protection until after the inspecting Party has indicated
13 which documents it would like copied and produced. During the inspection and before
14 the designation, all of the material made available for inspection shall be deemed
15 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
16 copied and produced, the Producing Party must determine which documents, or
17 portions thereof, qualify for protection under this Order. Then, before producing the
18 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to
19 each page that contains Protected Material.

20 If only a portion or portions of the material on a page qualifies for protection,
21 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
22 appropriate markings in the margins).

23 (b) for testimony given in depositions that the Designating Party identify the
24 Disclosure or Discovery Material on the record, before the close of the deposition all
25 protected testimony.

26 (c) for information produced in some form other than documentary and for any
27 other tangible items, that the Producing Party affix in a prominent place on the exterior
28 of the container or containers in which the information is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive the
6 Designating Party’s right to secure protection under this Order for such material. Upon
7 timely correction of a designation, the Receiving Party must make reasonable efforts to
8 assure that the material is treated in accordance with the provisions of this Order.

9 10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Third-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court’s Scheduling
13 Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process (and, if necessary, file a discovery motion) under Local Rule 37.1 et
16 seq.

17 6.3 The burden of persuasion in any such challenge proceeding shall be on the
18 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
19 to harass or impose unnecessary expenses and burdens on other parties) may expose
20 the Challenging Party to sanctions. Unless the Designating Party has waived or
21 withdrawn the confidentiality designation, all parties shall continue to afford the
22 material in question the level of protection to which it is entitled under the Producing
23 Party’s designation until the Court rules on the challenge.

24 25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Third-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions prescribed in this Order. When the Action has been terminated, a Receiving
3 Party must comply with the provision of section 13 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
8 ordered by the court or permitted in writing by the Designating Party, a Receiving
9 Party may disclose any information or item designated “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to
12 disclose the information for this Action;

13 (b) the officers, directors, and employees (including House Counsel) of the
14 Receiving Party to whom disclosure is reasonably necessary for this Action;

15 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
16 is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the Court, the jury, and the Court’s personnel;

19 (e) court reporters and their staff;

20 (f) professional jury or trial consultants, mock jurors, and Professional
21 Vendors to whom disclosure is reasonably necessary for this Action and who have
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
26 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
27 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
28 not be permitted to keep any confidential information unless they sign the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
2 by the Designating Party or ordered by the court. Pages of transcribed deposition
3 testimony or exhibits to depositions that reveal Protected Material may be separately
4 bound by the court reporter and may not be disclosed to anyone except as permitted
5 under this Stipulated Protective Order; and

6 (i) any mediator or settlement officer, and their supporting personnel,
7 mutually agreed upon by any of the parties engaged in settlement discussions.

8
9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
10 OTHER LITIGATION

11 If a Party is served with a subpoena or a court order issued in other litigation that
12 compels disclosure of any information or items designated in this Action as
13 “CONFIDENTIAL,” that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification shall
15 include a copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to
17 issue in the other litigation that some or all of the material covered by the subpoena or
18 order is subject to this Protective Order. Such notification shall include a copy of this
19 Stipulated Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by
21 the Designating Party whose Protected Material may be affected. If the Designating
22 Party timely seeks a protective order, the Party served with the subpoena or court order
23 shall not produce any information designated in this action as “CONFIDENTIAL”
24 before a determination by the court from which the subpoena or order issued, unless
25 the Party has obtained the Designating Party’s permission. The Designating Party shall
26 bear the burden and expense of seeking protection in that court of its confidential
27 material and nothing in these provisions should be construed as authorizing or
28 encouraging a Receiving Party in this Action to disobey a lawful directive from

another court.

9. A THIRD-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Third-Party in this Action and designated as "CONFIDENTIAL." Such information produced by Third Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Third-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Third-Party's confidential information in its possession, and the Party is subject to an agreement with the Third-Party not to produce the Third-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Third-Party that some or all of the information requested is subject to a confidentiality agreement with a Third-Party;

(2) promptly provide the Third-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Third-Party, if requested.

(c) If the Third-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Third-Party's confidential information responsive to the discovery request. If the Third-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Third-Party before a determination by the court. Absent a court order to the contrary, the Third-Party shall bear the burden and expense

1 of seeking protection in this court of its Protected Material.

2
3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
5 Protected Material to any person or in any circumstance not authorized under this
6 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
7 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
8 all unauthorized copies of the Protected Material, (c) inform the person or persons to
9 whom unauthorized disclosures were made of all the terms of this Order, and (d)
10 request such person or persons to execute the “Acknowledgment and
11 Agreement to Be Bound” that is attached hereto as Exhibit A.

12
13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
14 PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other protection,
17 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
18 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
19 may be established in an e-discovery order that provides for production without prior
20 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
21 parties reach an agreement on the effect of disclosure of a communication or
22 information covered by the attorney-client privilege or work product protection, the
23 parties may incorporate their agreement in the stipulated protective order submitted to
24 the court.

25
26 12. MISCELLANEOUS

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order, no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the
9 specific Protected Material at issue. If a Party's request to file Protected Material
10 under seal is denied by the court, then the Receiving Party may file the information
11 in the public record unless otherwise instructed by the court.

12 13 13. FINAL DISPOSITION

14 After the final disposition of this Action, as defined in paragraph 4, within 60
15 days of a written request by the Designating Party, each Receiving Party must return
16 all Protected Material to the Producing Party or destroy such material. As used in this
17 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
18 summaries, and any other format reproducing or capturing any of the Protected
19 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
20 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
21 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
22 work product, and consultant and expert work product, even if such materials contain
23 Protected Material. Any such archival copies that contain or constitute Protected
24 Material remain subject to this Protective Order as set forth in
25 Section 4 (DURATION).

26
27 14. Any willful violation of this Order may be punished by civil or criminal
28 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary

1 authorities, or other appropriate action at the discretion of the Court.

2
3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4
5 Dated: June 19, 2017

THE BLOOM FIRM

6 By: _____

7 Attorneys for Plaintiff

8
9 Dated: June 14, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

10
11 By: s/ Gary E. Scalabrini

12 Gary E. Scalabrini
Attorneys for Plaintiff

13 **Signature Certification**

14 Pursuant to Local Rule 5-4.3.4(2)(i), I attest that all other signatories listed, and
15 on whose behalf the filing is submitted, concur in the filing's content and have
16 authorized the filing.

17
18 Dated: June 19, 2017

THE BLOOM FIRM

19
20 By: _____

21 Attorneys for Plaintiff

22
23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24
25
26 DATED: June 19, 2017



27 HON. SHERI PYM
28 United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name],
of _____ [full address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court for the
Central District of California on [date] in the case of Washington v. Sierra Aluminum
Company, et al., United States District Court Case No. 5:16-cv-00298-DMG (SPx) . I
agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions
of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____
[full name] of _____
[full address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that on June 15, 2017, I electronically filed STIPULATED
4 PROTECTIVE ORDER; and this certificate of service using the CM/ECF System
5 which will send notification of such filing to the following:

6
7 Gary Scalabrini, Esq.
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9 GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP
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20 DATED: June 19, 2017

/s/ Alyson Decker

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